

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

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In re:) P. & S. Docket No. D-97-0017
Sechler Foods, Inc.,)
and Scott I. Sechler)
Respondents,)

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DECISION WITHOUT HEARING AS TO SECHLER FOODS, INC.
BY REASON OF DEFAULT

This is a disciplinary proceeding under the Packers and Stockyards Act, 1921 as amended and supplemented (7 U.S.C. § 181 et seq.), herein referred to as the Act, instituted by a complaint filed by the Deputy Administrator, Packers and Stockyards Programs, Grain Inspection, Packers and Stockyards Administration, United States Department of Agriculture, charging that the respondents wilfully violated the Act.

Copies of the complaint and Rules of Practice (7 C.F.R. § 1.130 et seq.) governing proceedings under the Act were served upon the respondents. Respondent Scott I. Sechler filed an answer denying the material allegations contained in the complaint. Respondent Sechler Foods, Inc. did not file an answer. Instead, this respondent filed a Notice of Bankruptcy Filing and Automatic Stay through its trustee on April 24, 1997, giving notice that it was a debtor in a bankruptcy proceeding and asserting that this proceeding was subject to the automatic stay provided by 11 U.S.C. § 362. Complainant's attorney notified Trustee Steven R. Neuner by letter dated May 2, 1997, a copy of which was filed with the Hearing Clerk, that respondent Sechler Foods, Inc. was required to file an answer to the complaint, as this proceeding was brought to enforce the regulatory power of a governmental unit and it comes under the exception to the automatic stay provided by 11 U.S.C. § 362(b)(4) and the express exception provided for enforcement proceedings under the Packers and Stockyards Act in 11 U.S.C. § 525(a). In a reply.

letter dated May 14, 1997, the Trustee Steven R. Neuner asserted that he had the sole authority to act on behalf of respondent Sechler Foods, Inc., and did not intend to participate in this proceeding. He questioned whether proper relief was sought against respondent Scott I. Sechler, but acknowledged that the revocation of any license held by Sechler Foods, Inc. and the entry of an order to cease and desist against further operations except in accordance with USDA regulations would constitute actions and relief that did not fall within the automatic stay. On August 11, 1999, Trustee Steven R. Neuner was advised that Complainant intended to proceed to hearing, and would request a default decision as to the corporate respondent at the hearing. This matter was duly set for hearing. Complainant and respondent Scott I. Sechler have agreed prior to the scheduled hearing date to the entry of a consent decision. Complainant has requested that a decision be entered as to respondent Sechler Foods, Inc. without hearing by reason of default.

Respondent Sechler Foods, Inc. has failed to file an answer within the time prescribed in the Rules of Practice (7 C.F.R. § 1.130 et seq.), and the material facts alleged in the complaint, which are admitted by the failure of respondent Sechler Foods, Inc. to file an answer, are adopted and set forth herein as findings of fact.

This decision and order, therefore, is issued pursuant to section 1.139 of the Rules of Practice (7 C.F.R. § 1.139).

Findings of Fact

1. Respondent Sechler Foods, Inc., hereinafter referred to as the corporate respondent, is a New Jersey corporation whose business mailing address was Route 40, Harding Highway, Vineland, N.J. 08360.
2. The corporate respondent at all times material herein was:
 - (a) Engaged in the business of purchasing live poultry in commerce for slaughter,

and selling poultry and poultry products in commerce; and

(b) A live poultry dealer within the meaning of the term as defined in the Act and subject to the provisions of the Act.

3. Respondent Scott I. Sechler, hereinafter referred to as the individual respondent, is an individual whose mailing address is Box G, Strausstown, PA 19959.

4. The individual respondent is and at times material herein was:

(a) Engaged in the business of purchasing live poultry in commerce for slaughter, and selling poultry and poultry products in commerce;

(b) President and principal owner of the stock issued by the corporate respondent;

(c) Responsible for the direction, management and control of the corporate respondent; and

(d) A live poultry dealer within the meaning of the term as defined in the Act and subject to the provisions of the Act.

5. The corporate respondent, under the direction management and control of the individual respondent, purchased live poultry (spent hens) in cash sales, on or about the dates and in the transaction specified below, and failed to pay, when due, the full purchase price of such live poultry.

LIVE POULTRY SELLER	PURCHASE KILL DATE	PAYMENT DUE \$ 410	INVOICE NO.	PURCHASE AMOUNT
Brown Brothers Produce, Nashville, IL	13 Feb. 95	14 Feb. 95	20573	\$ 368.05
	28 Feb. 95	01 Mar. 95	20623	\$1,879.93
	01 Mar. 95	02 Mar. 95	20623	\$1,780.39
	01 Mar. 95	02 Mar. 95	20623	\$ 995.80
	24 Apr. 95	25 Apr. 95	20739	\$1,374.95

LIVE POULTRY SELLER	PURCHASE KILL DATE	PAYMENT DUE \$ 410	INVOICE NO.	PURCHASE AMOUNT
Brown Brothers Produce (Cont.)	24 Apr. 95	25 Apr. 95	20739	\$1,486.43
	28 Apr. 95	01 May 95	20739	\$1,511.57
	28 Apr. 95	01 May 95	20739	\$1,465.26
	28 Apr. 95	01 May 95	20739	\$1,585.38
	02 May 95	03 May 95	20777	\$1,418.76
	03 May 95	04 May 95	20777	\$2,054.26
	03 May 95	04 May 95	20777	\$2,021.89
	05 May 95	08 May 95	1904	\$1,675.05
	09 May 95	10 May 95	1918	\$2,131.68
	34827	34828	1848	\$ 380.64
	34827	34828	1919	\$ 1,662.51
	34828	34829	1847	\$ 2,010.97
	34830	34833	1952	\$ 1,930.04
	34830	34833	1950	\$ 1,606.67
	34830	34833	1951	\$ 1,920.30
				\$33,233.22
C&O Food Services Ocean, NJ	07 Jun 95	08 Jun 95	4114	\$ 154.14
	07 Jun 95	08 Jun 95	4115	\$ 140.94
	07 Jun 95	08 Jun 95	4116	\$ 155.44
	09 Jun 95	12 Jun 95	4125	\$ 150.30
	09 Jun 95	12 Jun 95	4126	\$ 147.80
	09 Jun 95	12 Jun 95	4127	\$ 146.80
	09 Jun 95	12 Jun 95	4134	\$ 133.13
	12 Jun 95	13 Jun 95	4133	\$ 93.03
				\$ 1,121.58

LIVE POULTRY SELLER	PURCHASE KILL DATE	PAYMENT DUE \$ 410	INVOICE NO.	PURCHASE AMOUNT
Wenger's Feed Mill Rheems, PA	14 Jun 95	15 Jun 95	4154	\$ 280.80
	14 Jun 95	15 Jun 95	4172	\$ 287.51
	14 Jun 95	15 Jun 95	4173	\$ 283.31
	15 Jun 95	16 Jun 95	4181	\$ 156.09
	19 Jun 95	20 Jun 95	4155	\$ 308.49
	19 Jun 95	20 Jun 95	4156	\$ 310.09
	19 Jun 95	20 Jun 95	4157	\$ 307.49
	19 Jun 95	20 Jun 95	4158	\$ 305.89
	19 Jun 95	20 Jun 95	4159	\$ 302.61
	19 Jun 95	20 Jun 95	4160	\$ 307.18
	22 Aug 95	23 Aug 95	4405	\$ 540.76
	23 Aug 95	24 Aug 95	4401	\$ 396.24
	23 Aug 95	24 Aug 95	4402	\$ 500.24
	23 Aug 95	24 Aug 95	4403	\$ 504.64
	23 Aug 95	24 Aug 95	4404	\$ 491.44
				\$ 5,282.78
Plain & Fancy Tamagua, PA	28 Jun 95	29 Jun 95	4223	\$ 303.39
	28 Jun 95	29 Jun 95	4224	\$ 286.19
	30 Jun 95	03 Jul 95	4237	\$ 314.90
	30 Jun 95	03 Jul 95	4238	\$ 313.50
	30 Jun 95	03 Jul 95	4239	\$ 190.50
				\$ 1,408.48
A.J. DeCoster Company Turner, ME	06 Nov 95	07 Nov 95	4703	\$ 3,039.20
Leshner Poultry Farm Chambersburg, PA	08 Sep 95	11 Sep 95	4496	\$ 651.06
	08 Sep 95	11 Sep 95	4497	\$ 627.46

LIVE POULTRY SELLER	PURCHASE KILL DATE	PAYMENT DUE \$ 410	INVOICE NO	PURCHASE AMOUNT
Leshner Poultry Farm (Cont.)	08 Sep 95	11 Sep 95	4498	\$ 623.06
	11 Sep 95	12 Sep 95	4441	\$ 501.66
				\$ 2,403.24
Heisler's Eggs Tamagua, PA	12 Sep 95	13 Sep 95	4338	\$ 654.52
	13 Sep 95	14 Sep 95	4557	\$ 522.68
	13 Sep 95	14 Sep 95	4558	\$ 593.08
	13 Sep 95	14 Sep 95	4561	\$ 461.34
				\$ 2,186.62
Webster Poultry Lebanon, PA	20 Oct 95	23 Oct 95	4662	\$ 2,860.66
	20 Oct 95	23 Oct 95	4663	\$ 1,828.86
				\$ 3,698.47
Galen Spickler Elizabeth, PA	15 Nov 95	16 Nov 95	4724	\$ 2,368.60
	22 Nov 95	24 Nov 95	4757	\$ 3,016.07
				\$ 5,384.67
GRAND TOTAL:				\$55,995.83

6. A total of \$57,758.26 remained unpaid for live poultry purchased in cash sales in the above transaction when livestock purchasing was discontinued in December of 1995.

7. On January 7, 1993, a consent decision was issued in P. & S. Docket No. D-92-90 that ordered Sechler's Poultry, Inc., its officers, directors, agents and employees, successors and assigns, and Scott I. Sechler and Richard A. Sechler to cease and desist from (1) failing to pay, when due, for live poultry purchased in cash sales; and (2) failing to pay for live poultry purchased in cash sales. This cease and desist provisions of this order became applicable to the

corporate respondent August 16, 1994, when a Certificate of Merger was filed merging Sechler's Poultry, Inc., into Sechler Foods, Inc., leaving Sechler Foods, Inc. the surviving successor corporation.

Conclusion

By reason of the facts found in Findings of Fact 5 through 7 above, respondent Sechler Foods, Inc. has wilfully violated section 410 of the Act (7 U.S.C. § 228 b-1).

Order

Respondent Sechler Foods, Inc., its agents and employees, directly or through any corporate or other device, in connection with its operations as a live poultry dealer, shall cease and desist from:

1. Failing to pay, when due, for live poultry purchased in cash sales; and
2. Failing to pay for live poultry purchased in cash sales.

This decision shall become final and effective without further proceedings 35 days after the date of service upon respondent Sechler Foods, Inc., unless it is appealed to the Judicial Officer by a party to the proceeding within 30 days pursuant to section 1.145 of the Rules of Practice (7 C.F.R. § 1.145).

Copies of this decision shall be served upon the parties.

Done at Washington D.C.

This 19th day of June, 2000



Administrative Law Judge